

AG Contract No.: KR01-0257TRN
ADOT ECS File No.: JPA 99-154
Project: City of Mesa Odor Control
Section: Price Freeway (SR 101L)
@ Baseline Rd.
TRACS No.: H 6884 01C
Budget Source Item No.: 83005

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into this date September 12, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State and the City participated in the design and construction of a sanitary sewer siphon crossing State Route (SR) 101L near Baseline Road in Mesa. Following construction of the project, sewer odors became a problem in the area. Research into the odor problem identified the siphon as part of the problem and that both the State and the City were responsible in contributing to the odor problem in the area. Odor Control improvements were constructed under City of Mesa Project Number 98-83.1. The State agrees to partner with the City regarding the solution to the odor problem and with the approval of the State Transportation Board remit a one-time lump sum amount of \$370,000.00; and the State will convey excess land parcel number L-M-071A to the City for the States shared responsibility to the odor problem, hereinafter referred to as the "Project".

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27714
Filed with the Secretary of State
Date Filed: 9-12-05
Janice K. Whelan
Secretary of State
By: [Signature]

II. SCOPE OF WORK

1. The State shall:

a. Upon execution and approval of the State Transportation Board, convey ownership responsibilities of excess land parcel number L-M-071A, located at the Northeast corner of SR 101L and Baseline Road by "Special Warranty Deed" to the City for the State's shared responsibility of the sanitary sewer siphon odor solution improvements.

b. Upon execution, approval of the State Transportation Board and receipt of an invoice from the City, remit to the City a one-time lump sum amount of \$370,000.00, for the State's shared responsibility of the sanitary sewer siphon odor solution improvements.

c. Not be obligated to operate or maintain the sanitary sewer siphon, should the City fail to budget or provide for proper and perpetual maintenance as set forth in the Agreement.

d. Grant the City an "Encroachment Permit", through the Phoenix District Maintenance Office, for maintenance and operation of the siphon and odor control facilities within the State's right-of-way.

e. Allow the City to maintain and operate the Sanitary Sewer Siphon and odor control facilities that is located within the State's right-of-way.

2. The City shall:

a. Upon execution and approval of the State Transportation Board, accept ownership responsibilities for excess land parcel number L-M-071A, located at SR 101L and Baseline Road by "Special Warranty Deed" from the State for the sanitary sewer siphon odor solution improvements.

b. Upon execution and approval of the State Transportation Board, invoice the State for a one-time lump sum amount of \$370,000.00 for the State's shared responsibility of the sanitary sewer siphon solution improvements.

c. Obtain the necessary "Encroachment Permit" through the Phoenix District Maintenance Office, for maintenance and operation of the siphon and odor control facilities within the State's right-of-way the Project.

d. Upon execution of this Agreement, at its own cost and as an annual item in its budget, provide perpetual and proper operation and maintenance of the Project.

III. MISCELLANEOUS PROVISIONS

1. Each party agrees to indemnify, defend, save and hold harmless the other party from and against any and all claims, losses, liability, costs or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the other party, are caused by the act, omission, negligence, misconduct, or other fault of the State or City, its officers, officials, agents, employees or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect upon conveyance of deed for excess land parcel number L-M-071A; execution of this Agreement and reimbursement; provided herein. However, any provisions for maintenance, provided by the City shall be perpetual. It is understood and agreed that, in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said Project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: 602-712-7424

City of Mesa
Attn: City Manager
Box 1466
Mesa, AZ 85211-1466
(480) 644-3000

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations if funds are not allocated and available of the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.

9. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

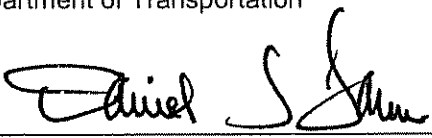
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF MESA

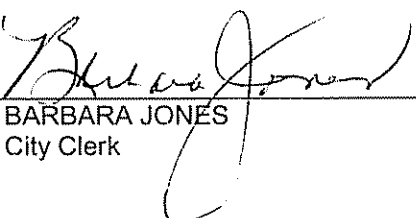
By 
MICHAEL HUTCHINSON
City Manager

STATE OF ARIZONA

Department of Transportation

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST:

By 
BARBARA JONES
City Clerk

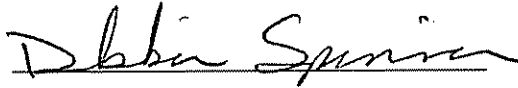


99-154-VPM-Mesa-Odor Control-27 June 05-slc

APPROVAL OF THE CITY OF MESA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 24 day of August, 2005.



City Attorney

RESOLUTION NO. 8551

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE ODOR CONTROL FACILITY LOCATED AT THE INTERSECTION OF PRICE FREEWAY AND BASELINE ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA,
MARICOPA COUNTY, AS FOLLOWS:

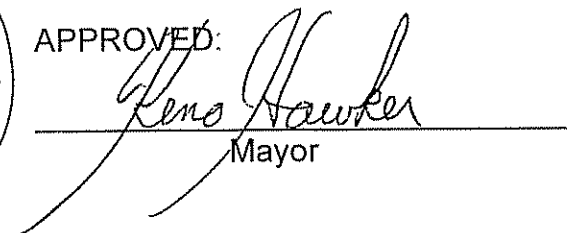
Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the design and construction of the odor control facility located at the intersection of Price Freeway and Baseline Rd (ADOT JPA No. 99-154); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 15th day of August, 2005.

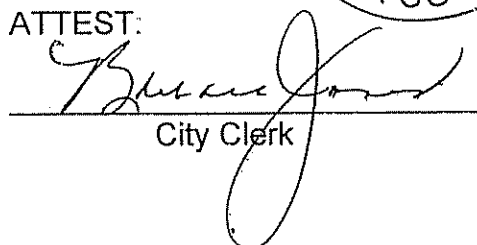


APPROVED:

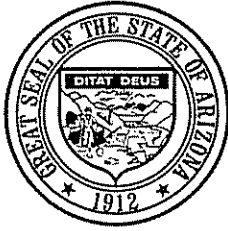


Mayor

ATTEST:



City Clerk



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION

Susan E. Davis
Assistant Attorney General

Direct: 602-542-8855
Fax: 602-542-3646

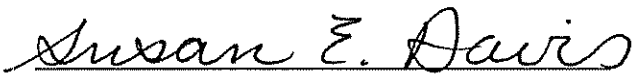
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR01-0257TRN (JPA 99-154), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED Sept. 1, 2005.

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
922455